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RD 426

April 27, 1992

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Opinion Committee

The Honorable Mr. Dan Morales
Attorney General of the State of Texas
Price Daniel Senior Building
Austin, Texas 78701

Dear Mr. Attorney General:

In 1985 the Texas Higher Education Coordinating Board settled out of court with a claimant whose state payroll warrant was withheld by the State Comptroller because she was delinquent in repaying her Hinson-Hazlewood College Student Loan (*Ollie Uhmoh v. Commissioner of Higher Education*). In a similar case involving the withholding of a state retirement warrant by the State Comptroller because of delinquency in repaying a Hinson-Hazlewood College Student Loan, the Texas Higher Education Coordinating Board settled out of court. These settlements were based upon the decision in the *City of Houston v. Nelius* case, which determined that the withholding of the issuance of a payroll check (warrant) constituted garnishment of wages.

A recent Texas Supreme Court case, *ORANGE COUNTY, Texas et al., Appellants, v. Joe WARE, Sr., Appellee. No. C-9611, November 20, 1991*, determined that self-help offsets of mutual obligations between two parties is not garnishment. Since no third party was involved in the withholding of the issuance of the paycheck in this case, I would appreciate knowing if the results of the Ware case would enable the State Comptroller to withhold the issuance of state warrants to recipients of state payroll warrants and retirement warrants who are delinquent in repaying Hinson-Hazlewood College Student Loans.

Cordially,

Kenneth H. Ashworth